

- SUBJECT:** Regulation of money services businesses
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Solomons, McCall, Guillen, Flynn, Orr, Riddle
0 nays
1 present not voting — Chavez
- WITNESSES:** For — (*Registered but did not testify:* Demetrius McDaniel, Non Bank Funds Transmitter Group)
Against — None
On — Randall S. James, Bank Commissioner, Texas Department of Banking; (*Registered but did not testify:* Stephanie Newberg and Sarah Shirley, Texas Department of Banking)
- BACKGROUND:** Finance Code, ch. 152, the Texas Sale of Checks Act, regulates businesses that issue and sell checks, money orders, stored value cards, and other payment instruments used to transfer money from one person to another. Finance Code, ch. 153 regulates businesses that receive currency or an instrument payable in currency for transmission, exchange, or transportation.
- DIGEST:** CSHB 2218 would create Finance Code, ch. 151, the Money Services Act (MSA). The bill would consolidate Finance Code, ch. 152 and ch. 153, which would be repealed. In addition to defining terms relevant to the regulation of money services and identifying persons that would be exempt from licensing, the bill would address:
- administrative provisions ;
 - general money services, money transmission, and currency exchange licenses;
 - conduct of money transmission business;
 - examinations, reports, and records;

- enforcement; and
- administrative procedures and judicial review.

Administrative provisions. The Texas Department of Banking would administer the MSA, and the Texas Finance Commission would have the authority to adopt rules to administer and enforce the act. The bill would specify that the banking commissioner's powers were cumulative and would permit the commissioner to impose reasonable conditions upon a license. The commissioner could conduct investigations within or outside the United States to determine if a violation occurred, determine what penalties were necessitated by a violation, and conduct enforcement activities. The commissioner also could cooperate, coordinate, and share information with other governmental agencies that had jurisdiction over money services businesses or activities. A license holder, authorized delegate, or person who engaged in activities that required a license under the MSA would be considered to consent to the jurisdiction of Texas courts.

Money services license. An applicant for a money services license would be required to demonstrate the financial condition and responsibility, financial and business experience, competence, character, and general fitness to warrant the belief that the applicant would conduct business in a lawful manner, among other qualifications. The commissioner would consider the qualifications of certain persons associated with the applicant in determining whether to grant a license. The bill would identify specific criminal offenses, convictions for which within the 10 years preceding the application generally would disqualify the applicant, including offenses related to money laundering, structuring, drug trafficking, or terrorist funding.

CSHB 2218 would specify what must be included in an application for a money services license and set out provisions for the processing and investigation of an application. It would provide the conditions upon which a license would be issued or denied and prohibit the transfer or assignment of a license. Licenses would expire on August 15 of each year, and an applicant for renewal would have to meet several requirements, including submitting a renewal fee and renewal report containing financial information, documentation, and certification. A license holder would be required to surrender its license under certain conditions, but the license surrender would not affect the license holder's criminal or civil liability.

No fee or cost paid in connection with an application or renewal would be refundable.

Money transmission license. CSHB 2218 would define terms that would apply specifically to the money transmission business. Money transmission would be considered the receipt of money or monetary value in exchange for a promise to make the money available at a later time or different location.

The bill would describe activities that required a money transmission license. In addition to the general requirements for money services licensure, an applicant for a money transmission license would have to demonstrate that it met net worth and security requirements. Minimum net worth requirements would be between \$100,000 and \$1 million depending on characteristics of the specific business licensed. A license holder at all times would maintain security consisting of a surety bond, irrevocable letter of credit, certificate of deposit, or other cash equivalent that constituted acceptable security. The security requirement would range from \$300,000 to \$2 million depending on the license holder's business volume. A money transmission license holder would be required to maintain permissible investments in amounts specified according to the business' net worth.

A money transmission license holder would be liable for the payment of all money received for transmission either directly or through an authorized delegate. The bill would establish conditions for the conduct of business through an agent, including contract stipulations and a requirement to conduct a risk-based background check of the authorized delegate. The bill also would outline standards of conduct applicable to an agent. A trust would be imposed on all money submitted to a license holder or its agent for transmission until the obligation had been discharged. The bill would establish disclosure requirements that applied to money transmission transactions.

Currency exchange license. A currency exchange would be considered an exchange of the currency of one government for the currency of another government. The bill would describe the activities that would require a currency exchange license unless a person was licensed for money transmission or otherwise was exempt. An applicant would be required to meet the general qualifications for obtaining a money services

license. A currency exchange license holder would maintain security in the amount of \$2,500.

Examinations, reports, and records. CSHB 2218 would specify the examination, reporting, and recordkeeping requirements that applied to all persons licensed under the MSA and to authorized delegates. The commissioner could examine a license holder or agent as necessary or appropriate to administer and enforce the MSA and other applicable law, including the Bank Secrecy Act and the U.S.A. Patriot Act. The bill would establish guidelines for conducting such examinations. In order for a license holder to engage in an acquisition transaction, the commissioner would have to approve the change of control of the license holder.

License holders would keep records of each transmission or currency exchange, a general ledger, and other required documents. They also would make reports, including renewal reports, financial statements, and other documents as required by the commissioner. Specific reports would be required in the event of felony indictments and convictions and license revocation or suspension proceedings by other state regulators. Financial and other private information obtained by the department would be confidential and could not be disclosed subject to exceptions in statute or rule.

Enforcement. Suits could be carried out in district court for injunctive relief to enjoin a violation or enforce compliance with MSA provisions. The commissioner could:

- issue a cease and desist order against a person who engaged in unlicensed money services business activities or in order to protect the interests of a license holder, its customers, or the public;
- issue consent orders which, upon agreement, would be final and could not be appealed;
- suspend or revoke a license or direct a license holder to revoke the designation of an agent for specified grounds; or
- take direct action to suspend or revoke an agent's status under specified circumstances.

The commissioner could impose, after notice and hearing, administrative penalties up to \$5,000 for specific violations, patterns of violations, and willful disregard for legal requirements. An administrative penalty could be collected out of the security maintained by the license holder. The bill

would establish the notice, hearing, and other procedures that applied to non-emergency orders and the requirements, notice, and hearing procedures that applied to emergency orders.

Other provisions. All administrative proceedings with regards to the MSA would be conducted in accordance with Government Code, ch. 2001, and T.A.C., Title 7, ch. 9. A final order issued by the commissioner after a hearing could be appealed to the district court of Travis County.

CSHB 2218 would take effect September 1, 2005. Licenses issued under Finance Code, ch. 152 or ch. 153, prior to that date would expire on August 15, 2006, if not renewed. The bill would establish transitional dates by which net worth, permissible investment, and security requirements would be met. An existing contract between a license holder and an authorized delegate would remain in effect until the earlier of its renewal date or December 31, 2006.

**SUPPORTERS
SAY:**

Texas law needs to be modernized as a result of the rapid pace of change in technology, the increasing importance of monitoring money transfers to detect money laundering and terrorist financing, and the need to foster more cooperation among states regulating businesses that operate globally. CSHB 2218 would achieve these goals through the creation of a statutory framework that would treat money services businesses that engage in functionally similar transactions in a uniform manner. All money services businesses that received money from and had outstanding payment obligations to a customer would be regulated as money transmitters subject to the same licensing and regulatory requirements, regardless of the form in which the business received or transmitted the money. The bill would make an appropriate exception for a money services business that engaged only in currency exchange. Such a business would be subject to different licensing requirements that took into account the minimal consumer protection, safety, and soundness concerns presented by such businesses.

The regulatory scheme established by the bill would facilitate understanding of, compliance with, and enforcement of laws related to money services businesses. It would eliminate potential confusion around applicable licensing and other regulations. In addition, the regulatory approach would be consistent with that reflected in various model money services business acts and in the recently enacted laws of other states. This would permit improved regulatory cooperation, enabling regulators to

maximize scarce resources while minimizing the regulatory burden on the industry.

CSHB 2218 also would serve the interests of law enforcement. Persons licensed under the bill would comply and be examined for compliance with applicable state and federal laws intended to prevent money laundering and terrorist funding, including the Bank Secrecy Act and the U.S.A. Patriot Act. Finally, the bill would grant the commissioner added enforcement authority over unlicensed persons and license holders and their authorized delegates.

Because the bill is designed generally to harmonize the two sections of code governing money services, it would not be an appropriate vehicle in which to introduce policy adaptations, such as caps on fees. In addition, there is no precedent for such caps on money services transactions among other states. The fee structure for these products has been, and continues to be, based on market competition.

**OPPONENTS
SAY:**

While this bill would be effective in consolidating money services practices under one set of regulations, it would not address all needs to adapt to the new money services business environment. As the population using such services has evolved and expanded, including higher usage among immigrants, certain service providers have taken advantage of the new market by increasing fees. These fees often are quite significant relative to the amount of money a consumer transmits or exchanges. If the money services code is to be consolidated and modernized, then it also should include provisions restricting the amount of fees that could be charged for various transactions.

NOTES:

The original bill included provisions on statutory references that were unnecessary because they duplicated provisions in the Code Construction Act. The substitute removed these provisions.